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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

|                                   |   |                                       |
|-----------------------------------|---|---------------------------------------|
| 12 UNITED STATES OF AMERICA,      | ) | Case No. CR 17-0356 EMC               |
| 13 Plaintiff,                     | ) |                                       |
| 14 v.                             | ) | STIPULATION AND <del>[PROPOSED]</del> |
| 15 VICENTE CRUZ and ETEVATI LEVI, | ) | PROTECTIVE ORDER REGARDING            |
| 16 Defendants.                    | ) | PRODUCTION OF "PROTECTED MATERIALS"   |
|                                   | ) |                                       |
|                                   | ) |                                       |
|                                   | ) |                                       |

18  
19 STIPULATION

20 The government and defendant Vicente Cruz ("the defendant") hereby stipulate as follows:

21 The defendant is charged in a four-count Indictment, charging violations of 21 U.S.C. §§ 841  
22 and 846 (manufacture, distribution and possession with intent to distribute controlled substances, and  
23 conspiracy to do the same) and 18 U.S.C. § 922(g)(1) (felon in possession of a firearm). Pursuant to  
24 defendant's request, the government has made an initial production of discovery to defendant in this  
25 case. The government intends to produce additional discovery containing identification information of  
26 undercover agents (UC) and/or confidential informants (CI). The government believes there is a  
27 credible basis to believe that one or more of its witnesses, specifically a UC or CI, in this case may be  
28 endangered if their identities are revealed. The defendant does not concede that the government's

1 arguments are correct, but agrees that, if correct, they state a basis to believe that there are significant  
2 witness danger issues.

3 Pursuant to this Protective Order, the government will produce to defense counsel in this case  
4 audio and video recordings pertaining to the charges in the Indictment. The audio and video recordings  
5 include materials that the government deems to be sensitive, based on witness safety concerns.

6 Material produced according to this Protective Order will be labeled as "PROTECTED  
7 MATERIALS," and will include (1) audio recordings between the defendant and UC and CI and (2)  
8 video recording between the defendant and UC and CI. This Protective Order does not apply to  
9 discovery that is not marked PROTECTED MATERIALS. Any discovery with the designation  
10 PROTECTED MATERIALS is, however, subject to this Protective Order with the following  
11 restrictions:

12 1. Except when actively being examined for the purpose of the preparation of the defense of  
13 the defendant, all PROTECTED MATERIALS shall be stored and maintained in a locked or otherwise  
14 secure location or device (if stored electronically), meaning, a location or device which is accessible  
15 only to Covered Individuals as defined in paragraph 2 below. Defense counsel and other Covered  
16 Individuals as defined in paragraph 2 below shall not permit any person access of any kind to the  
17 PROTECTED MATERIALS, except as set forth below:

18 2. The following individuals ("Covered Individuals") only may examine the PROTECTED  
19 MATERIALS:

- 20 a. Defendant's counsel of record;
- 21 b. Members of defense counsel's law office who are assisting with the preparation of  
22 defendant's defense, but not including any person with a prior relationship to any  
23 defendant that falls outside the scope of legal representation (e.g., a familial or  
24 social relationship);
- 25 c. "Contracted Individuals," whom the defense engages to assist in this matter,  
26 including paralegals, attorneys, discovery coordinators, investigators and/or  
27 experts. The parties agree that "Contracted Individuals" shall be limited to  
28 professionals contracted to assist defense counsel in the defense of this matter,

and shall not include any individual with a prior relationship that falls outside the scope of legal representation (e.g., a familial or social relationship); and

d. The defendant, but only in the presence of defense counsel or another authorized person listed in this paragraph.

3. The Covered Individuals may examine the PROTECTED MATERIALS for the purpose of preparing a defense of defendant, and for no other purpose. The Covered Individuals may not discuss the contents of the PROTECTED MATERIALS with any person not listed in Paragraph 2, including the defendant, except as provided in Paragraph 2(d). Counsel for the defendant may make two physical or electronic copies of any materials designated as PROTECTED MATERIALS. Counsel may make a copy of the PROTECTED MATERIALS for each expert retained to assist in the preparation of the defense or to testify at trial.

4. Under no circumstance may any defendant take any PROTECTED MATERIALS, or any copies or images of PROTECTED MATERIALS, outside the presence of defense counsel.

5. If defense counsel determines that a person not covered by this Protective Order is needed to review the PROTECTED MATERIALS, he or she must obtain a further order of the Court before allowing any other individual to review the materials. Such a request to the Court will only occur after conferring with the government, unless the defense makes an ex parte showing under the limited circumstances specified below. In the event the parties agree that access should be allowed for persons not covered by this Protective Order, that agreement shall be documented in writing with no need for further involvement of the Court. If the parties cannot agree, defense counsel will make its motion to the Court on sufficient notice to the government so that it may assert its objection. Such a request to the Court will only occur after conferring with the government. The defense reserves the right to seek this relief ex parte but only based on a showing to the Court of necessity – which shall include a showing that this uncovered person’s access to the PROTECTED MATERIALS is material to the defense – to make such a request ex parte and reserves the right to withdraw that request should the Court not allow the defense to proceed ex parte. Once such agreement with the government is reached, or once such further order of the Court is obtained, such individual will be deemed a “Covered Individual” under this paragraph 2 and thus subject to the restrictions set forth in this Protective Order.

1           6.     A copy of this Protective Order shall be maintained with the PROTECTED  
2 MATERIALS at all times.

3           7.     The defendant shall not make or keep copies or images of any PROTECTED  
4 MATERIALS. The defendant shall not divulge to any person who is not a Covered Individual any  
5 personal identifying information disclosed in PROTECTED MATERIALS.

6           8.     All individuals other than defense counsel and defendant who receive access to the  
7 PROTECTED MATERIALS, prior to receiving access to the materials, shall sign a copy of this  
8 Protective Order acknowledging that:

- 9           a.     They have reviewed the Order;
- 10          b.     They understand its contents;
- 11          c.     They agree that they will only access the PROTECTED MATERIALS for the  
12               purposes of preparing a defense for defendant; and,
- 13          d.     They understand that failure to abide by this Protective Order may be considered  
14               contempt of Court, punishable accordingly.

15 These signed copies shall be maintained by counsel for the defense and shall be made available upon  
16 request under seal to the Court.

17           9.     Except as provided explicitly in paragraph 2 above, PROTECTED MATERIALS may  
18 not be shown, played (in the case of an audio and video recording), or otherwise divulged to any  
19 individual who is not a Covered Individual.

20           10.    If the PROTECTED MATERIALS are attached to any pleadings or other court  
21 submissions, the PROTECTED MATERIALS and any pleadings or submissions referencing those  
22 materials shall be filed or lodged under seal.<sup>1</sup>

23           11.    The defense team shall return the PROTECTED MATERIALS (and any duplicate copies  
24 of the same) to the government fourteen calendar days after any one of the following events, whichever  
25 is latest in time, occurs: dismissal of all charges against defendant; defendant's acquittal by court or  
26 jury; the expiration of time to appeal a judgment; or, the conclusion of any direct appeal.

27           <sup>1</sup> This Order authorizes such filings under seal and the parties are not required to seek additional  
28 authorization from the Court to do so.

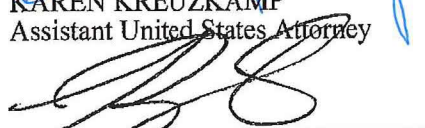
12. After the conclusion of proceedings in the district court or any direct appeal in the above-captioned case, the government will maintain a copy of the PROTECTED MATERIALS. The United States will maintain the PROTECTED MATERIALS until the time period for filing a motion pursuant to 28 U.S.C. § 2255 has expired. After the statutory time period for filing such a motion has expired, the government may destroy the PROTECTED MATERIALS. In the event defendant is represented by counsel and files a motion pursuant to 28 U.S.C. § 2255, the government will provide that counsel with a copy of the PROTECTED MATERIALS under the same restrictions as trial and direct appeal defense counsel. Defendant's attorney in any action under 28 U.S.C. § 2255 shall return the same materials fourteen calendar days after the district court's ruling on the motion or fourteen calendar days after the conclusion of any direct appeal of the district court's denial of the motion, whichever is later.

IT IS SO STIPULATED.

DATED: 8/17/2017

Respectfully submitted,  
BRIAN J. STRETCH

United States Attorney  
  
KAREN KREUZKAMP  
Assistant United States Attorney

  
Ruben T. Munoz  
Attorney for Vicente Cruz

PROTECTIVE ORDER

For the reasons stated above, the Court finds good cause to restrict the disclosure of some of the materials produced in discovery in this case. Therefore, the Court orders that the materials described above may be produced subject to the restrictions set forth above.

IT IS SO ORDERED.

Dated: 8/22/17

PROTECTIVE ORDER  
CR 17-0356 EMC

HON. EDWARD M. CHEN  
United States District Court

